

ENTERED

December 18, 2024

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

K AND S RESTORATIONS LLC,

Plaintiff,

VS.

COLONY INSURANCE COMPANY, *et*
al.,

Defendants.

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CIVIL ACTION NO. 4:23-CV-03017

ORDER

Before the Court is Defendant TWFG Insurance Service LLC's ("TWFG") Motion for Dismissal as an Improperly Joined Party and Motion to Dismiss (the "Motion"). Doc. #40. Plaintiff has not responded, and the deadline to do so has passed. Having considered TWFG's arguments, the submissions, and the applicable legal authority, the Court denies TWFG's Motion for Dismissal as an Improperly Joined Party and Motion to Dismiss as MOOT. Doc. #40.

On February 17, 2023, Plaintiff sued Defendants TWFG and Colony Insurance Company ("Colony") in the 284th Judicial District of Montgomery County. Doc. #1, Ex. 4 at 3. Plaintiff and TWFG are citizens of Texas, and Colony is a resident of Virginia and Illinois for purposes of diversity jurisdiction. On August 16, 2023, Colony removed the case to this Court, asserting that there is complete diversity between Plaintiff and Colony, and TWFG was improperly joined. Doc. #1 at 2. On September 15, 2023, Plaintiff moved to remand the case, claiming TWFG was properly joined. Doc. #4. On September 4, 2024, the Court issued an Order finding that TWFG was improperly joined in this cause of action. Doc. #31. The Court further found that complete

diversity of citizenship exists between Plaintiff and Colony for the Court to exercise jurisdiction. *Id.* Now, TWFG has filed the present Motion seeking dismissal from this case with prejudice. Doc. #40.

The Fifth Circuit has held that after a district court concludes that the resident defendant is fraudulently joined, a dismissal without prejudice is appropriate as to the resident defendant because the federal court lacks jurisdiction to address the merits of the claims against the resident defendant. *See International Energy Ventures Management, L.L.C. v. United Energy Group, Ltd.*, 818 F.3d 193, 210-11 (5th Cir. 2016). Thus, when the Court found that TWFG was improperly joined, it effectively dismissed TWFG without prejudice. The Court notes that the Order (Doc. #31) did not explicitly dismiss TWFG from the case. For clarity, the Court now confirms that the Order dismissed TWFG *without* prejudice.

Because the Order issued on September 4, 2024, dismissed TWFG without prejudice, TWFG's Motion for Dismissal as an Improperly Joined Party and Motion to Dismiss (Doc. #40) filed on November 15, 2024, is not properly before the Court. Accordingly, the Court DENIES the Motion (Doc. #40) as MOOT.

It is so ORDERED.

DEC 16 2024

Date



The Honorable Alfred H. Bennett
United States District Judge